

AMENDED IN SENATE APRIL 20, 2009

SENATE BILL

No. 313

Introduced by Senator DeSaulnier

February 25, 2009

An act to amend Section 3722 of the Labor Code, relating to workers' compensation, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 313, as amended, DeSaulnier. Workers' compensation: penalty assessments.

Existing law requires every employer, except the state, to secure the payment of workers' compensation. *Existing law requires the Director of Industrial Relations to issue and serve on any employer that has failed to secure the payment of workers' compensation a stop order prohibiting the use of employee labor. Under existing law, at the time the stop order is issued and served, the director is required to issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit into the State Treasury to the credit of the continuously appropriated Uninsured Employers Benefits Trust Fund, the sum of \$1,000 per employee employed at the time the order is issued and served.* Existing law provides that *in lieu of the aforementioned penalty assessment*, at any time that the director determines that an employer has been uninsured for a period in excess of one week during the calendar year preceding the director's determination, the director may issue and serve a penalty assessment order that requires the uninsured employer to pay to the director, for deposit into the State Treasury to the credit of the Uninsured Employers *Benefits Trust Fund*, the greater of (1) twice the amount the employer would have paid in workers' compensation premiums during the period

the employer was uninsured or (2) the sum of ~~one thousand dollars (\$1,000)~~ \$1,000 per employee employed during the period the employer was uninsured.

This bill would increase the penalty assessment to \$1,500. The bill would make an appropriation because the increased penalty assessment would be deposited in a continuously appropriated fund.

Existing law provides that if the employer is currently insured, or becomes insured during the period during which the above penalty is being determined, the amount an employer would have paid in workers' compensation premiums shall be calculated by prorating the current premium for the number of weeks the employer was uninsured.

Existing law provides that if the employer is uninsured at the time the above penalty is being determined, the amount an employer would have paid in workers' compensation premiums shall be calculated by applying the weekly premium per employee on file with the Insurance Commissioner to the number of weeks the employer was uninsured. Existing law provides that each employee of the uninsured employer shall be assumed to be assigned to the governing classification for that employer as determined by the director after consultation with the Insurance Commissioner. Existing law provides that if the employer contends that the assignment of the governing classification is incorrect, or that any employee should be assigned to a different classification, the employer has the burden to prove that the different classification should be utilized.

This bill would require that, if the employer is currently insured, or becomes insured during the period during which the above penalty is being determined, the amount an employer would have paid in workers' compensation premiums shall be calculated by prorating the current premium for the number of weeks the employer was uninsured within the three-year period immediately prior to the date the above penalty assessment is issued.

This bill would also provide that if the employer is uninsured at the time the above penalty is being determined, the amount an employer would have paid in workers' compensation premiums shall be the product of the employer's payroll for all periods of time the employer was uninsured within the 3-year period immediately prior to the date the above penalty assessment is issued multiplied by a rate determined in accordance with regulation that may be adopted by the Labor Commissioner or, if none has been adopted, the average insurer rate per \$100 of payroll as reported in the most recent summary of the insurer

~~uniform experience rating plan~~ published by the rating organization designated by the Insurance Commissioner. The bill would delete the provisions regarding the governing classification to which each employee of an uninsured employer shall be assumed to be assigned.

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~^{yes}. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3722 of the Labor Code is amended to
2 read:
3 3722. (a) At the time the stop order is issued and served
4 pursuant to Section 3710.1, the director shall also issue and serve
5 a penalty assessment order requiring the uninsured employer to
6 pay to the director, for deposit in the State Treasury to the credit
7 of the Uninsured Employers Fund, the sum of one thousand *five*
8 *hundred* dollars ~~(\$1,000)~~ *(\$1,500)* per employee employed at the
9 time the order is issued and served, as an additional penalty for
10 being uninsured at that time *or issue and serve a penalty*
11 *assessment order pursuant to subdivision (b).*
12 (b) At any time that the director determines that an employer
13 has been uninsured for a period in excess of one week during the
14 calendar year preceding the determination, the director may issue
15 and serve a penalty assessment order requiring the uninsured
16 employer to pay to the director, for deposit in the State Treasury
17 to the credit of the Uninsured Employers Fund, the greater of (1)
18 twice the amount the employer would have paid in workers'
19 compensation premiums during the period the employer was
20 uninsured, determined according to subdivision (c), or (2) the sum
21 of one thousand *five hundred* dollars ~~(\$1,000)~~ *(\$1,500)* per
22 employee employed during the period the employer was uninsured.
23 A penalty assessment issued and served by the director pursuant
24 to this subdivision shall be in lieu of, and not in addition to, any
25 other penalty issued and served by the director pursuant to
26 subdivision (a).
27 (c) If the employer is currently insured, or becomes insured
28 during the period during which the penalty under subdivision (b)
29 is being determined, the amount an employer would have paid in
30 workers' compensation premiums shall be calculated by prorating
31 the current premium for the number of weeks the employer was

1 uninsured within the three-year period immediately prior to the
2 date the penalty assessment is issued. If the employer is uninsured
3 at the time the penalty under subdivision (b) is being determined,
4 the amount an employer would have paid in workers' compensation
5 premiums shall be the product of the employer's payroll for all
6 periods of time the employer was uninsured within the three-year
7 period immediately prior to the date the penalty assessment is
8 issued multiplied by a rate determined in accordance with
9 regulation that may be adopted by the Labor Commissioner or, if
10 none has been adopted, the average insurer rate per one hundred
11 dollars (\$100) of payroll as reported in the most recent summary
12 ~~of the insurer uniform experience rating plan~~ published by the
13 rating organization designated pursuant to Section 11734 of the
14 Insurance Code.

15 (d) If upon the filing of a claim for compensation under this
16 division the Workers' Compensation Appeals Board finds that any
17 employer has not secured the payment of compensation as required
18 by this division and finds the claim either noncompensable or
19 compensable, the appeals board shall mail a copy of their findings
20 to the uninsured employer and the director, together with a
21 direction to the uninsured employer to file a verified statement
22 pursuant to subdivision (e).

23 After the time for any appeal has expired and the adjudication
24 of the claim has become final, the uninsured employer shall be
25 assessed and pay as a penalty either of the following:

26 (1) In noncompensable cases, two thousand dollars (\$2,000)
27 per each employee employed at the time of the claimed injury.

28 (2) In compensable cases, ten thousand dollars (\$10,000) per
29 each employee employed on the date of the injury.

30 (e) In order to establish the number of employees the uninsured
31 employer had on the date of the claimed injury in noncompensable
32 cases and on the date of injury in compensable cases, the employer
33 shall submit to the director within 10 days after service of findings,
34 awards, and orders of the Workers' Compensation Appeals Board
35 a verified statement of the number of employees in his or her
36 employ on the date of injury. If the employer fails to submit to the
37 director this verified statement or if the director disputes the
38 accuracy of the number of employees reported by the employer,
39 the director shall use any information regarding the number of
40 employees as the director may have or otherwise obtains.

1 (f) Except for penalties assessed under subdivision (b), the
2 maximum amount of penalties which may be assessed pursuant
3 to this section is one hundred thousand dollars (\$100,000). Payment
4 shall be transmitted to the director for deposit in the State Treasury
5 to the credit of the Uninsured Employers Fund.

6 (g) (1) The Workers' Compensation Appeals Board may
7 provide for a summary hearing on the sole issue of compensation
8 coverage to effect the provisions of this section.

9 (2) In the event a claim is settled by the director pursuant to
10 subdivision (e) of Section 3715 by means of a compromise and
11 release or stipulations with request for award, the appeals board
12 may also provide for a summary hearing on the issue of
13 compensability.